

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 413 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

MUKESHBHAI MAVAJIBHAI

GODAVARIYA

Versus

CHANDRIKABEN MUKESHBHAI

GODAVARIYA

Appearance:

MR RAJESH M AGRAWAL for Petitioners

RULE SERVED for Respondent No. 1

MR BY MANKAD, APP for Respondent No. 2

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 22/10/1999

ORAL JUDGEMENT

Heard learned counsel Mr. S.R. Divetia for learned counsel Mr. Rajesh Agrawal for the petitioner and learned APP Mr. Mankad for respondent no.2 State. Respondent no.2 though served, has not remained present either personally or through her counsel.

Mr. Divetia has submitted that considering the allegations made in the complaint, learned Chief Judicial

Magistrate, Amreli ought not to have sent complaint registered and number as Criminal Inquiry Case No. 29/99- for investigation under sec. 156(3) of the Cr.P.Code, vide his order dated 26.4.1999 because the alleged cruelty was never inflicted on the complainant within the territorial jurisdiction of the learned Chief Judicial Magistrate, Amreli. Learned Chief Judicial Magistrate, Amreli has no jurisdiction over the matter and, therefore, the impugned order dated 26.4.1999 is without jurisdiction. He, therefore, prayed that the complaint should be quashed and set aside. He has further submitted that the allegations made in the complaint are too vague and general. In absence of any specific allegation, jurisdiction of the criminal court cannot be invoked and so on that count also, the proceedings should be quashed and set aside.

In response to the submission made by the learned counsel for the petitioners, ld. APP Mr. Mankad for the State has submitted that considering the ratio of the judgment of this Court in the case of Girdharilal Tenumal Motwani v/s State of Gujarat & Anr., reported in 1997(2) GLH 432, this Court can transfer the complaint filed before the learned Chief Judicial Magistrate, Amreli to the Court of learned Judicial Magistrate, First Class, Botad, District : Bhavnagar as Ld. Judicial Magistrate, First Class, Botad has jurisdiction over the matter. So far as vagueness of allegations in the complaint is concerned, it should be left to the learned Magistrate who has to adjudicate the matter. It will be open for the petitioner to lead oral evidence and the same can be evaluated by learned Judicial Magistrate, First Class, Botad has jurisdiction over the matter.

Turning down or quashing a complaint alleging such grave and serious offence on such technicality would carry a wrong message because usually the complainants of such complaints are illiterate, rustic and villagers and/or a poor lady. Hence, in view of settled principles of criminal jurisdiction, I am not inclined to express any opinion on merits of the matter as Mr. Divetia has fairly submitted that the complaint may be sent to the learned Judicial Magistrate, First Class, Botad for passing an appropriate orders. This petition can be disposed of on that count alone. I would like to refer to relevant para of the decision in the case of Girdharilal Motwani (supra) which is the clear reply to the submissions of Mr. Divetia. In the said judgment, it was submitted that after reading the complaint, learned Magistrate ought to have returned the complaint back to the complainant under sec. 201 of the Cr.P.Code for presentation thereof before an appropriate Court. Proceedings were initiated under sec. 482 of Cr.P.Code

in the aforesaid case. By not accepting the submission for quashing the coimplaint, it is observed in para-3 that :-

"As per her averments made by the complainant in her complaint at Ahmedabad where the accused are residing while she was residing in her matrimonial house. As per her accusation also the property alleged to have been misappropriated was at Ahmedabad and that misappropriation has also taken place at Ahmedabad as per her complaint. Thus, the averment made in her complaint clearly discloses and show that all the alleged offences had taken place at Ahmedabad. Therefore, in the circumstances the learned Magistrate had no jurisdiction to entertain the said complaint and to issue process. After reading the complaint he ought to have returned the complaint back to the complainant under Section 201 of Cr.P.Code for presentation to the proper Court. As the order in question has been passed by him without having jurisdiction for taking cognizance of the offence alleged in the complaint. Said order of issue of process passed by the learned JMFC, Vadodara in Cri.Case No. 1693/95 is without jurisdiction, illegal and invalid. However, I direct the learned Magistrate to issue notice to the complainant and to return the complaint to the complainant for presentation to the proper Court as per the provisions of sec. 201 of Cr.P.Code."

In the case on hand, the complaint is filed in the year 1992. In that view of the matter, it would be just and proper to directly transfer the complaint to the court of learned Judicial Magistrate, First Class, Botad, District : Bhavnagar and complainant should not be put to one more hardship to obtain original complaint back from the court of learned Chief Judicial Magistrate, Amreli and to present the same before the court of learned Judicial Magistrate, First Class, Botad. Hence, following order is passed:

Spl.Criminal Application is allowed. Impugned order dated 26.4.1999 passed by the learned Chief Judicial Magistrate, Amreli in Criminal Inquiry Case No. 29/99 is hereby quashed and set aside and the complaint being registered as Criminal Inquiry Case No. 29/99 in the court of learned Chief Judicial Magistrate, Amreli is ordered to be directly transferred to the Court of learned Judicial Magistrate, First Class, Botad, Dist.: Bhavnagar and on receipt of the complaint, learned Magistrate is directed to issue (i) summons to the

complainant and (ii) on hearing the complainant, pass appropriate orders below the said complaint on merits and in accordance with law.

Rule is made absolute accordingly.

22.10.1999 [C.K. BUCH, J]

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